

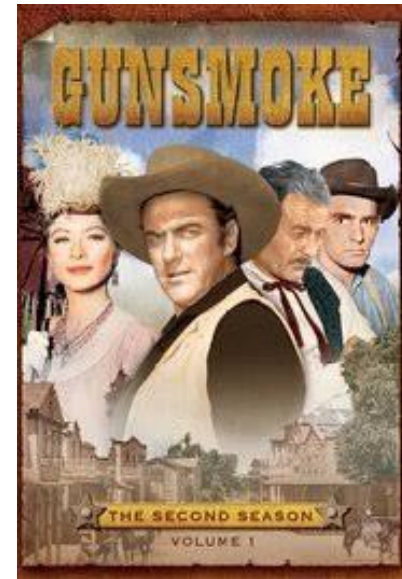
Criminal Mental Health Evaluations

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Forensic Services in Mississippi

- Forensic Services at Mississippi State Hospital (MSH)
 - Serves all 82 counties
 - Provides evaluations and treatment
 - Capacity of 45 beds for all forensic patients and dangerous civil patients
 - Competence restoration treatment, NGRI acquittees, high risk civil patients, NCNR high risk patients
 - Current staffing problems have resulted in a decrease in the number of available beds

What do these 5 things have in common?



Average Cost of new house \$10,950



Most Common Criminal Mental Health Evaluations in Mississippi

- Competence to Proceed Legally (CTP)
 - Defense lawyers have concerns about defendants' competency in about 10-15% of their cases
 - Evaluated in about 5% of all criminal trials in the US
 - Approximately 60,000 evaluations annually in the US
- Insanity Defense
 - Not Guilty by Reason of Insanity (NGRI)
 - In the US, 45 states, the federal government, and the military recognize some version

Mississippi Criminal Forensics Overview

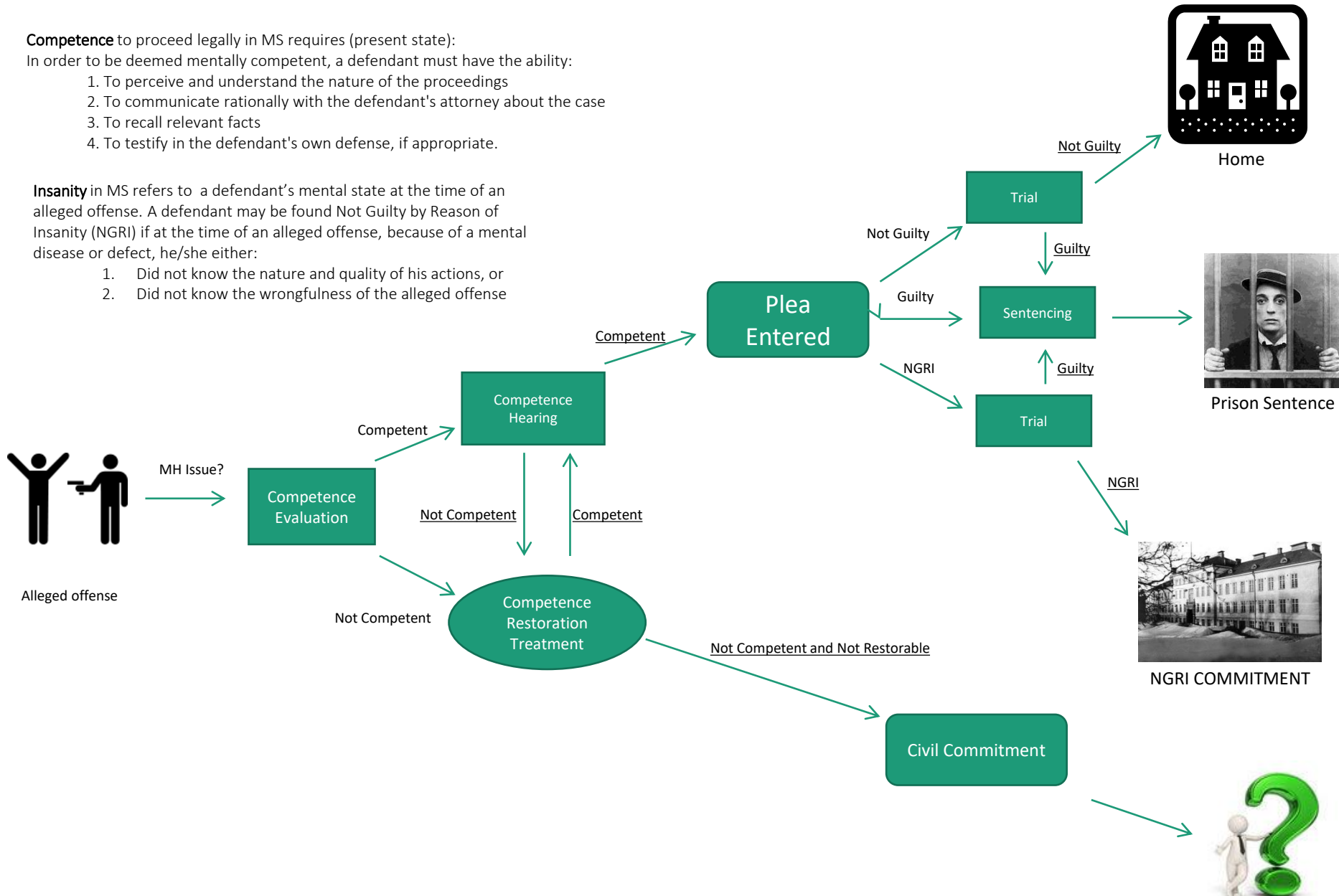
Competence to proceed legally in MS requires (present state):

In order to be deemed mentally competent, a defendant must have the ability:

1. To perceive and understand the nature of the proceedings
2. To communicate rationally with the defendant's attorney about the case
3. To recall relevant facts
4. To testify in the defendant's own defense, if appropriate.

Insanity in MS refers to a defendant's mental state at the time of an alleged offense. A defendant may be found Not Guilty by Reason of Insanity (NGRI) if at the time of an alleged offense, because of a mental disease or defect, he/she either:

1. Did not know the nature and quality of his actions, or
2. Did not know the wrongfulness of the alleged offense



CTP Historical Antecedents

- Originated in early English common law
- 9th century English criminal court judges excused mute defendants from trial
- Prohibition against trials in *absentia*
 - Legal right to be both physically and mentally present
- 17th century English courts considered mute defendants as:
 - “mute of malice”
 - “mute by visitation of God”

Youtsey v. United States (1899)

“ It is not ‘due process of the law’ to subject an insane person to trial upon an indictment involving liberty or life”

Dusky v. United States (1960)

- Missouri – 1958
- 33-year-old man with schizophrenia
- Charged with the kidnapping and attempted rape of a 15-year-old girl
- Sent to FMC in Springfield, MO, for evaluation and treatment
 - Stabilized on Thorazine

Dusky v. United States (1960)

- After 4 months, psychiatrist testified Dusky was “oriented to time and place and [had] some recollection of events”
- Judge ruled Dusky CTP
- Found guilty and sentenced to 45 years
- Appealed and United States Supreme Court (USSC) overturned
 - “the record in this case does not sufficiently support the findings of competency to stand trial”

Dusky v. United States (1960)


- US Supreme Court stated in *Dusky v. U.S.* (1960)
 - “...the test must be whether he [the defendant] has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of proceedings against him”
- Standard used in federal courts and most state jurisdictions

CTP evolution in Mississippi

- *Gammage v. State* (Miss. 1987)
 - Sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him
- *Jay v. State* (Miss. 2009) – quoting *Martin v. State* (Miss. 2004)
 - Who is able to perceive and understand the nature of the proceedings
 - Who is able to rationally communicate with his attorney about the case
 - Who is able to recall relevant facts
 - Who is able to testify in his own defense, if appropriate
 - Whose ability to satisfy the foregoing criteria is commensurate with the severity of the case

Current CTP standard in Mississippi

- Mississippi Rules of Criminal Procedure (MRCrP) – Rule 12.1 (2017)
- “In order to be deemed mentally competent, a defendant must have the ability
 - to perceive and understand the nature of the proceedings,
 - to communicate rationally with the defendant’s attorney about the case,
 - to recall relevant facts, and
 - to testify in the defendant’s own defense, if appropriate”
- Ability ≠ willingness



If you are incompetent to
proceed legally, then you
cannot get to insanity

Mental State at the Time of the Offense (MSO) Evaluations

- Presence of a mental illness can lower the degree of criminal intent in a mitigating, or even exculpating, way
- A retrospective evaluation of the defendant's thought processes and behavior before, during, and after the alleged crime(s)
- Affirmative or *mens rea* defenses
 - Automatism
 - Diminished capacity
 - Psychoactive substance use
 - Guilty But Mentally Ill (GBMI)
 - **Not Guilty by Reason of Insanity (NGRI)**

Diminished Capacity

- Reckless, negligent, or lesser *mens rea*
- Specific vs. general intent
- Approximately 35 states allow under varying circumstances
- 10 states have rejected this exception, including MS
 - *Edwards v. State* (Miss. 1983), *Cannaday v. State* (Miss. 1984), *Stevens v. State* (Miss. 2003), *Brown v. State* (Miss. Ct. App. 2007)
- *Montana v. Egelhoff* (1996)
 - USSC found a statute not allowing this exception does not violate due process clause
 - Test for violation of DPC: whether it “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental”

Psychoactive Substance Use Defenses

- Intoxication can be used for diminished capacity and insanity defenses
- Depends on if intoxication is voluntary, involuntary, or result of long-term addiction/use

Voluntary Intoxication

- Absolving intoxicated defendants who have “temporarily destroyed their mental capacities by voluntarily ingesting intoxicants would encourage recklessness”
- Common law: not only is intoxication not an excuse, but its involvement is also an aggravation
- Consequences of intoxication include the potential consequence of reducing one’s mental capacity
- Intent to become intoxicated is itself a wrongful intent that can take the place of ordinary criminal intent
- Fear that a defense of intoxication could be easily simulated as to make prosecution too difficult

Involuntary Intoxication

“The presumption that one who consumes an intoxicant against one’s will, or without full awareness of the implications of one’s conduct, is not blameworthy. Thus ... the offender does not freely choose to become intoxicated and does not willingly assume the risks of one’s intoxicated conduct”

- When is intoxication involuntary?
 - Intoxication as a result of an innocent mistake by defendant as to the character of the substance taken or the result of fraud
 - Intoxication as the result of duress or coercion
 - Intoxication taken for medicinal purposes or is taken pursuant to medical advice
 - Aware of substance being taken, but the resulting reaction is “grossly excessive in degree” and the individual is unaware they are susceptible to an atypical reaction to the substance taken

Insanity Defense

- Insanity is the most commonly invoked doctrine related to mental state at the time of the offense
- Probably the most controversial issue in criminal law
- Insanity is a legal term and is not synonymous with mental illness

Common Misconceptions

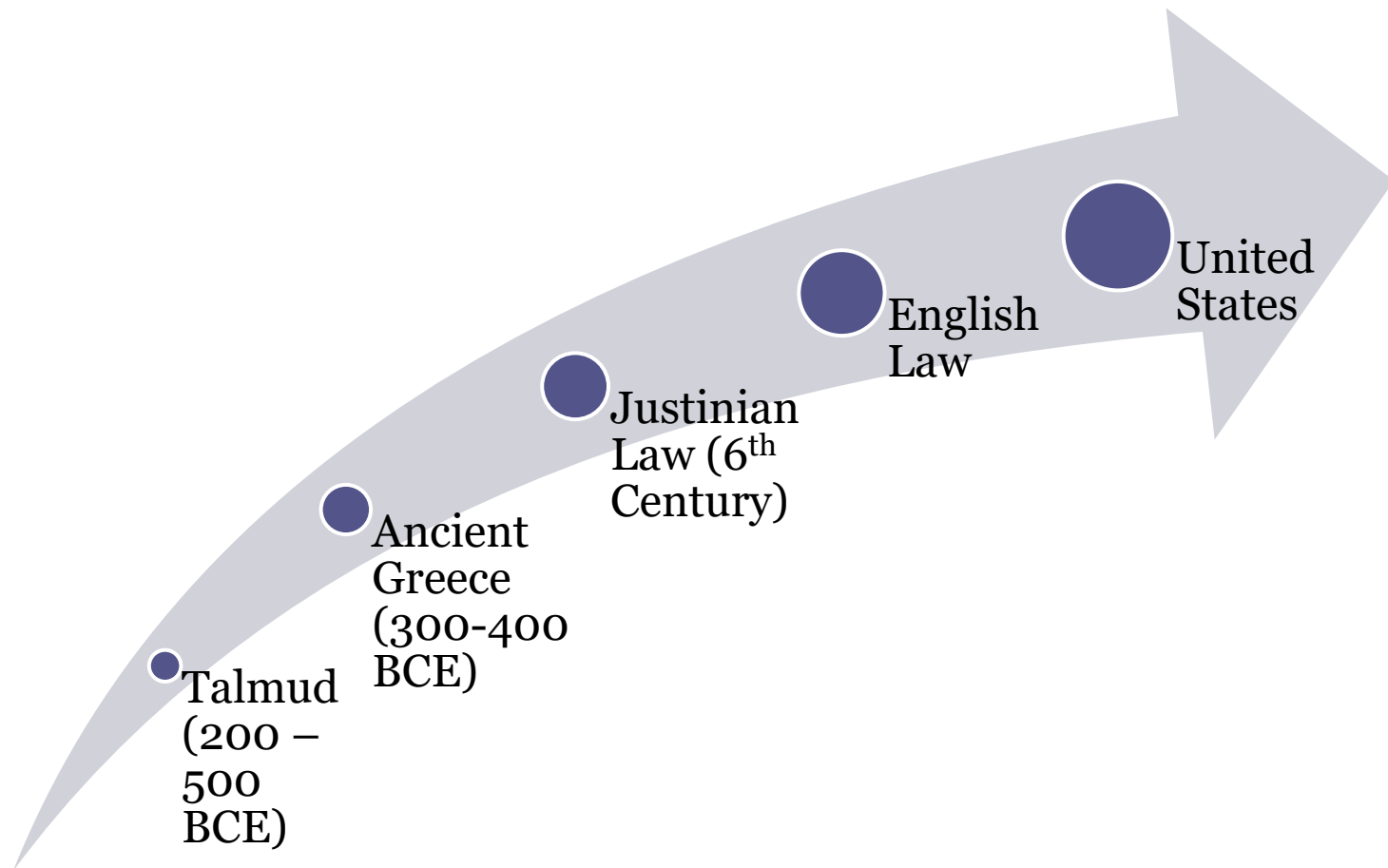
Myths

1. A large number of defendants use the insanity defense
2. Most insanity defenses are successful
3. NGRI acquittees are released upon acquittal or shortly after
4. NGRI acquittees are extremely dangerous

Facts

1. Insanity defense is raised in 0.1 - 0.5% of felony trials in US
2. Successful about 25% of the time when it is contested
3. Usually NGRI acquittees are automatically committed and often spend up to 50% longer confined before being released than those convicted
4. NGRI acquittee recidivism rates are less than or equal to convicted felons

Evolution of Insanity Defense



M'Naghten Case (1843)

- Englishman Daniel M'Naghten was acquitted insane for killing the private secretary of Prime Minister Robert Peel
- Jury acquitted because of testimony that he was so delusional he lacked self-control
- Queen Victoria and public were outraged
- House of Lords convened to answer questions about the insanity defense

M’Naghten Rule

- House of Lords announced:
 - “To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from a disease of mind, as to not know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong”
- Became known as the “right-wrong” test

“Insane Delusion” of M’Naghten

- If a person, while acting under a relevant delusion, commits a crime, he/she would be held not responsible only when the act would be justifiable, if the delusion were in fact true

Components of M'Naghten Rule

- Threshold of mental disease or defect
 - Mental disease = mental illness
 - Mental defect = intellectual disability
- There must be a link between the mental disease/defect and the act
- Knowledge of nature of the act
 - Knowing what you are doing
- Knowledge of quality of the act
 - Understanding the consequences of the act
- Knowing the wrongfulness of the act
 - Moral v. legal wrongfulness

M’Naghten Rule in the US

- Most US jurisdictions adopted M’Naghten Rule as the test for insanity
 - MS formally adopted in *Bovard v. State* (1856)
 - *Cunningham v. State* (1879) – MSSC recognized the “insane delusion” test as part of the M’Naghten Rule
- Criticisms that it was too strict and focused only on cognitive impairment
- Some jurisdictions developed alternative tests
 - Irresistible impulse test; Durham rule/product test

American Law Institute (ALI) Test (1955)

- “A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law”
- 1972: ALI Model Penal Code upheld this but excluded ASPD as a mental disease or defect
- Initially, widely adopted in federal jurisdictions and many states

ALI Test In Mississippi

- *Hill v. State* (1976)
 - MSSC rejected ALI “substantial capacity” test
- MS Code includes it as statutory mitigation in the sentencing phase of capital murder trials
 - Excludes “due to mental disease or defect”

Laney v. State (Miss. 1986)

- Laney was convicted of capital murder for killing a Deputy Sheriff and sentenced to life
- Sheriff and Deputy Sheriff were serving a chancery court writ for mental evaluation
- Laney said he was on his own property, had not bothered anyone, and had been sent by the Lord to preach
- Pretrial evaluation at Mississippi State Hospital
 - Doctors opined he was competent and insane

Important Findings by MSSC in *Laney*

- Reiterated M’Naghten test of insanity is the State standard
- Suffering from a mental disorder does not in itself make someone insane, but someone must have a mental disorder to be insane
- Expert opinions are not conclusive upon the issue of insanity
- Knowledge of legal wrongfulness is sufficient to preclude an insanity defense

Current Mississippi Insanity Standard

- MRCrP 12.3
- “if the psychiatrist’s and/or psychologist’s opinion is that at the time of the alleged offense the defendant suffered from a mental disease or defect, the relation, if any, of such to the alleged offense, including:
 - whether the defendant knew the nature and quality of the defendant’s actions; and
 - if so, whether the defendant knew that the actions were wrong”

Settled or Fixed Insanity

- Most US jurisdictions have agreed that when the downstream effects of substance use lead to long-term impairment, that can serve as legitimate grounds for an insanity plea
- Acute withdrawal from a voluntarily ingested substance does not meet insanity requirements
- Exculpatory mental state must persist beyond the period of acute intoxication
- 29 states and DC have accepted settled insanity as the basis for an insanity defense, and only 1 state has explicitly rejected it
 - MS has not addressed issue

Does the specific insanity standard matter?

- Research shows that the burden and standard of proof account for most of the difference in acquittal rates across jurisdictions
- Mock Jury Research
 - No difference in insanity verdicts based on the insanity definition offered or if no formal definition is given
 - No difference in insanity verdicts based on the specificity of expert testimony
 - Jurors have their own idea of who is blameworthy
 - 1/3 of jurors used moral wrongfulness

Other Relevant USSC Landmark Cases

- *Jones v. United States* (1983)
 - NGRI verdict is sufficient to justify commitment criteria at a preponderance of the evidence standard
 - Commitment of NGRI acquittee serves a different purpose than incarceration, and there is necessary correlation between the severity of the offense and the length of time needed for recovery
- *Foucha v. Louisiana* (1992)
 - An NGRI acquittee must be both mentally ill and dangerous for a state to justify continued commitment

Other Relevant USSC Landmark Cases

- Clark v. Arizona (2006)
 - States can restrict evidence of mental illness at the time of a crime from being used as a *mens rea* defense
 - States have varying standards for legal insanity, and there is no constitutional right to the volitional prong
- Kahler v. Kansas (2020)
 - Due process does not require states to adopt any specific insanity test

Insanity Evaluation

- Retrospective evaluation of mental state and behavior before, during, and after the alleged offense
- Essential elements of evaluation
 - Presence of a mental disease or defect
 - Crime synopsis
 - Third-party (collateral) information
- Sources of Information
 - Collateral records and interviews
 - Defendant interview(s)
 - Psychological testing

Essential Collateral Sources

- Discovery for alleged offense
 - Police/investigative reports and narratives
 - Witness and alleged victim statements
 - Crime scene photographs, dash cam recordings, body cam recordings
 - Audio/video recording of defendant's interrogation (even if asserts Fifth Amendment)
 - Autopsy and laboratory reports
 - Judicial transcripts
 - Attorney notes/observations
 - News coverage accounts/social media

Essential Collateral Sources (cont.)

- Interviews of individuals familiar with defendant around the time of alleged offense
 - Family and friends
 - Possibly treatment providers, jail personnel, attorney
- Interviews of individuals familiar with defendant's historical information
 - Family member or close friend
- Defendant's medical and mental health records (both historical and around time of alleged offense)

Interview of Defendant

- Notification of purpose/limits of confidentiality
- Developmental/historical information
 - Family history
 - Childhood environment/upbringing
 - Social and marital history
 - Educational and employment history
 - Legal history
 - Substance use history
 - Medical and psychiatric history

Interview of Defendant (cont.)

- Current mental status
 - Behavioral observations
 - Attitude toward evaluation
 - Appearance/hygiene
 - Cognitive functioning (e.g., attention, memory, orientation)
 - Mood/affect
 - Speech/thought content
 - Thought processes
 - Perceptual disturbances (e.g., hallucinations, delusions)
 - Other symptoms of mental illness
 - Insight and judgment
- Assessment of CTP

Defendant's Recollection of Alleged Offense

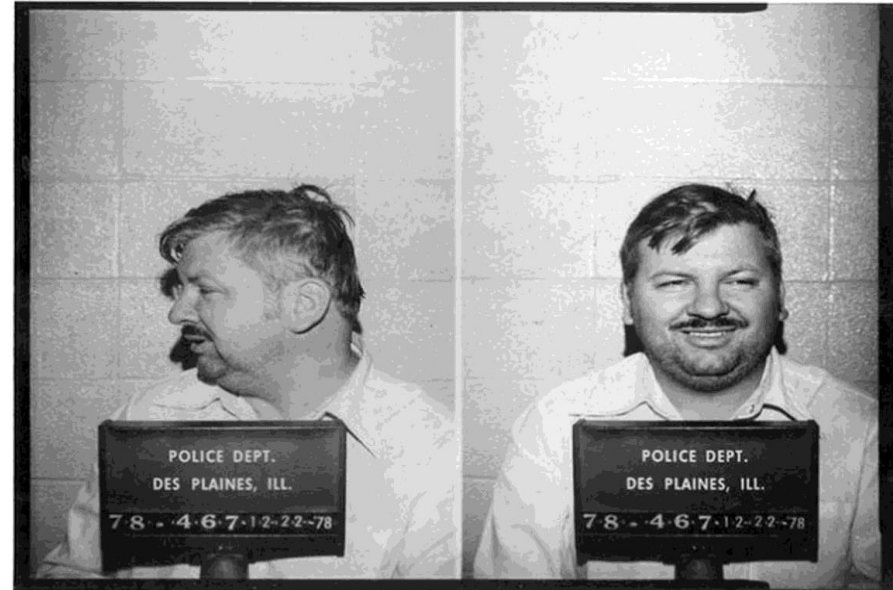
- Events leading up to alleged offense
 - Housing, employment, relationships
 - Medical/mental health treatment
 - Major changes in environment
 - Relationship with alleged victim
 - Preparation for alleged offense
- Detailed account of alleged offense
 - Symptoms of mental illness
 - External stressors (e.g., provoking events, fear/panic)
 - Substance use
 - Thoughts, feelings, behaviors, and motives
- Present understanding/response to alleged offense
 - Perception of offense, emotional response
- Post-offense response
 - Behavior following alleged acts
 - Emotional response to alleged acts
 - Attempts to explain alleged acts

Multiple Alleged Offenses

- Evaluate mental state at each offense separately
- You may reach different conclusions for each offense

Important Considerations

- Assess reliability of collateral informants and defendant
 - Check for consistency across sources
 - Address inconsistencies between sources with defendant
- Consider alternative causal hypotheses for alleged offense
- Is psychological testing relevant
 - Assesses current functioning and general level of functioning
 - Can help assess validity of defendant's self-report
 - Can help establish/rule out a mental disorder



But doctor, was he competent at the time of the crime?

Competence to Proceed

- Presumption of competence
- Burden is on defense to prove incompetence
- Can be brought up at any time in the adjudication process
- Present ability (current mental status)
- Evaluator's interview of defendant is most relevant
- Records from around or at time of offense are less relevant

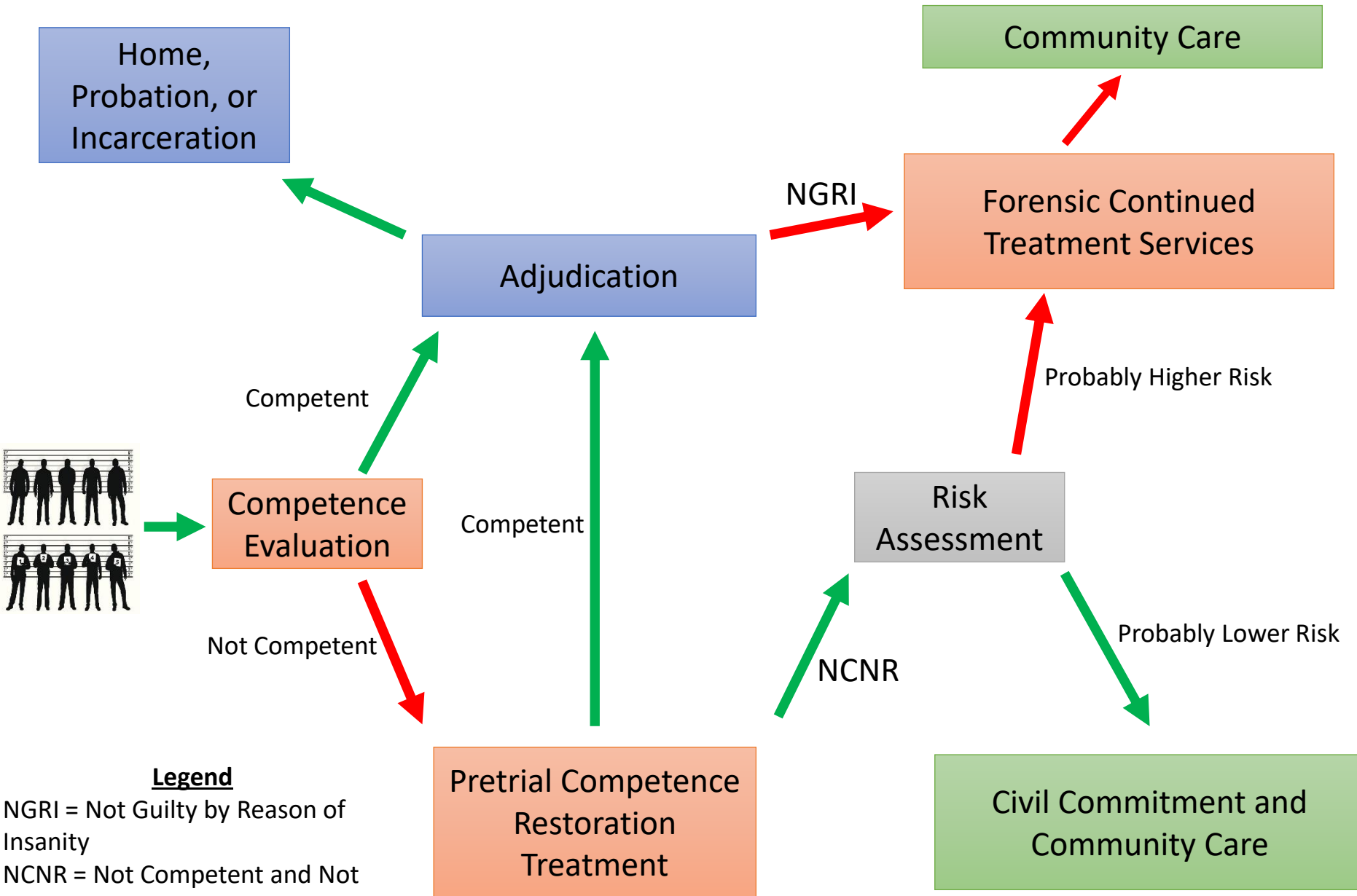
Not Guilty by Reason of Insanity

- Presumption of sanity
- Burden is on prosecution to prove was not insane
- Pretrial evaluation; defense must provide notice of plan to use insanity defense
- Retrospective (mental state at the time of the alleged offense)
- Evaluator's interview of defendant is less relevant
- Records from around or at the time of offense are most relevant

Doctor, has the defendant been restored to sanity?

- Someone who has been found NGRI will never be “sane” for the crime
- Remember, insanity is the defendant’s mental state at the time of the crime
- Instead ask:
 - Is the defendant currently experiencing symptoms of mental illness
 - Is the defendant compliant with medication/treatment
 - What is the defendant’s current perception of the relationship between her mental illness and the crime
 - Has the defendant recently been aggressive/violent
 - What is the least restrictive treatment environment that is appropriate

Forensic Services Moving Forward



Legend

NGRI = Not Guilty by Reason of Insanity
NCNR = Not Competent and Not Restorable

How can you help?

- Make sure we receive the order
 - Include waiver of medical privilege in order
- Get us the minimally requested info ASAP
 - Order (and motion, if available)
 - MSH Patient Information Form
 - Includes family/close friend contact info
 - Discovery for alleged offense
- Lack of info limits our evaluation
- Only request relevant vs. catch all evaluations
- Explore diversion options for lower risk defendants/less serious offenses

Contacts for MSH Forensic Services

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